IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

MFA.No. 658 of 2003()

WCC.166/2000 of W.C.C.,THRISSUR
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APPELLANT: 2ND OPP.PARTY

NATIONAL INSURANCE COMPANY LTD.,
MALIACKAL BUILDING, P.B.NO.70,
IRINJALAKUDA.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: APPLICANT AND OPP.PARTY-1.
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1. DASKUMAR V. S/O. NARAYANAN NAIR,
VALLATHE HOUSE, POST ARATTUPUZHA.

2. E.L.JOY, ELIKKAL HOUSE,
ALAGAPPA NAGAR, THRISSUR DISTRICT.

BY ADV. SRI.SHEJI P.ABRAHAM FOR R1
SRI.B.PREMNATH (E) FOR R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.658 OF 2003

Dated this the 21st day of June, 2007

JUDGMENT

KOSHY, J.

This appeal is filed by the Insurance company questioning the quantum of compensation awarded by the Commissioner of Workmen's Compensation Act. The applicant met with an accident during the course of employment and he claimed compensation and as a result of which, Commissioner granted compensation of Rs.1,05,106/- with 12% interest. Only quantum of compensation is disputed in this appeal.

2. As per the accident cum wound certificate following injuries were caused:

1. Extensive scarring and contraction of the soft tissues muscle of the right leg causing instability to walk.

2. Equal contracture of the heel cord causing loss of push off during walking, difficult to squat.

3. Pain in the right leg due to impaired blood supply to the right leg, causing clandication pain vascular insufficiency following crushing of the muscles.

4. Difficult to walk on toes.

5. Wastes of the right calf leg 5 cm.

6. Impaired sensation over the right leg due to damage to the neuro-vascular structures of the leg.

7. Due to lack of sensation there is chronic skin injury and ulceration of the leg.

8. Ugly and contracted scar both thigh due to removal of skin for skin grafting operation.

His permanent disability is assessed as 25% and loss of earning capacity as 75%.

However, Dr.K.Soman certified that there is loss of earning capacity of 75%. Certificate reads as follows:

1. Lacerated wound right leg extending from knee to lower third tibia exposing whole tibia.

2. Medical compartment muscle are crushed and badly contaminated.

Dr.Soman was examined as AW2. In several cases came up before this Court, we have discarded the certificate of Dr.Soman and send the matter to the Medical Board and in most of the cases, Medical

Board assessed lesser percentage of disability and lesser earning capacity and considering the fact that there is only crush injury and no fracture and under Section 4(1) (c) (ii) and Explanation II of the Workmen's Compensation Act, earning capacity has to be calculated by the Medical practitioner in relation to the loss of earning capacity fixed for permanent injury, we referred the matter to the Medical Board. But the petitioner did not attend Medical Board for examination. We have directed the petitioner to be present in Court. He was present before the Court. He stated that after the injury, for long days he was unable to work as a driver. But when the notice reached him, he was outside the State travelling in a heavy vehicle as a helper and after his travel to U.P., Bombay etc. he reached subsequently after the date fixed for examination. In any event, there is no basis for assessing 45% loss of earning capacity by the Commissioner. But even the Commissioner did not rely on the Medical certificate issued by Dr.K.Soman, loss of earning capacity was assessed as 25% by the Commissioner. Considering the fact that there is only crush injury on the foot and a lesser percentage of loss of earning capacity could have been assessed. But we are of the opinion that compensation amount of Rs.1,05,106/- without interest was deposited by the Insurance company in 2003 itself and the amount

was disbursed. Appeal was filed with a delay condonation petition and representation delay. Delay was condoned only in 2006 and by the time amount was already disbursed. It is also submitted that he has undergone three surgeries and about Rs.45,000/- has been spend for that. But there is no provision under the Workmen's Compensation Act for reimbursement of medical expenses. However, delay was condoned after three years of passing of the award. Considering the facts and circumstances of the case, we limit the compensation amount including interest as Rs.1,05,106/- and Insurance company is absolved from making any further payment of interest or any other amount and appeal allowed to the above limited extent.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO./200

JUDGMENT

Dated:20th June, 2007